UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANWAR, *et al.*,

Plaintiffs,

-against-

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This Document Relates To: *Knight Services Holdings Limited et al. v. Fairfield Sentry Limited, et al.*, 1:09-cv-02269 (VM)

Master File No. 09-cv-118 (VM)

Dated: June 8, 2009

THE ANWAR PLAINTIFFS' REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL

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ARGUMENT

THE COMPETING LEAD PLAINTIFF MOVANTS OFFER NO PROOF TO REBUT THE PRESUMPTION THAT THE ANWAR PLAINTIFFS ARE THE MOST ADEQUATE PLAINTIFFS TO REPRESENT INVESTORS

The Anwar Plaintiffs[1], with losses of over $26 million on their investments in Fairfield Sentry Limited ("Fairfield Sentry") and Fairfield Sigma Limited ("Fairfield Sigma"), are entitled to the presumption in favor of the lead plaintiff movant with "the largest financial interest in the relief sought" in the action. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). The two competing lead plaintiff movants with losses of approximately $1 million (the "Fairfield Investor Group," represented by Cohen Milstein), and $1.5 million (the "Knight Services Plaintiffs", represented by Wolf Haldenstein) (collectively, the "Competing Movants") do not dispute the Anwar Plaintiffs' far greater losses and entitlement to the presumption that they are "the most adequate plaintiff" to represent investors. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

The strong presumption in favor of the Anwar Plaintiffs' adequacy to represent investors can be rebutted only upon "*proof* by a member of the purported plaintiff class that the presumptively most adequate plaintiff (aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II) (emphasis added). *See, e.g.,*

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[1] The Anwar Plaintiffs consist of Securities & Investment Company (SICO) Bahrain, Harel Insurance Investments and Financial Services Ltd., Pacific West Health Medical Center, Inc. Employees' Retirement Trust, St. Stephen's School, and AXA Private Management. Months prior to filing their lead plaintiff motion, the Anwar Plaintiffs retained interim co-lead counsel ("Interim Lead Counsel" – Boies Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian LLP) and had filed a detailed 112- page Consolidated Amended Complaint in this Court. None of the competing lead plaintiff movants have contested (nor could they contest) the Anwar Plaintiffs' ability to act as a group pursuant to § 21D(a)(3)(B)(iii)(I) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. (the "Exchange Act"), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 78u-4 et seq.

Varghese v. China Shenghuo Pharmaceutical Holdings, Inc., 589 F. Supp. 2d 388, 398 (S.D.N.Y. 2008) (requiring "'proof' challenging" the presumption in favor of the lead plaintiff movant with the largest financial interest); *Strougo v. Brantley Capital Corp.*, 243 F.R.D. 100, 105 (S.D.N.Y. 2007) ("Speculation and conjecture from one interested party is not enough to prove a nefarious collaboration"); *Sczesny Trust v.KPMG LLP*, 223 F.R.D. 319, 324-25 (S.D.N.Y. 2004) ("[C]onclusory assertions of inadequacy are … insufficient to rebut the statutory presumption under the PSLRA without specific support in evidence of the existence of an actual or potential conflict of interest or a defense to which [the potential lead plaintiff] would be uniquely subject.").[2] The Competing Movants have submitted no such "proof" to rebut the Anwar Plaintiffs' adequacy.

The Competing Movants' only argument (albeit not "proof") that the Anwar Plaintiffs "will not fairly and adequately protect the interests of the class" is that the Anwar Plaintiffs did not include federal securities claims in their initial Consolidated Amended Complaint filed April 24, 2009 [Document No. 116] (the "CAC"). *See* Fairfield Investor Group Mem. dated May 29, 2009 at 4 [Document No. 158]; Knight Services Plaintiffs Mem. dated May 29, 2009 at 3 [Document No. 155]. As stated in the Anwar Plaintiffs' Opening Mem. dated May 11, 2009 at 4 [Document No. 134] and Opposition Mem. dated May 29, 2009 at 5 [Document No. 154], the Anwar Plaintiffs determined in the first instance not to file federal securities claims because of the implications of the PSLRA stay of discovery (§78u-4(b)(3)), the extended 90-day period for filing, briefing, and determination of lead plaintiff motions (§78u-4(a)(3)), an evaluation of the available state and federal claims, and that the federal securities claims could be (in any event) subsequently asserted within the one year statute of limitations under the Securities Act of 1933 (15 U.S.C. §77m) and the two year statute of limitations under the Exchange Act (28 U.S.C. §1658). Inasmuch as Knight Services has filed federal securities claims implicating the 90-day period for determination of a lead plaintiff and discovery stay issues (which the Anwar Plaintiffs had hoped to avoid), and based on other litigation strategy considerations, the Anwar Plaintiffs have determined, if appointed lead plaintiff, to assert the federal securities claims in a further amended complaint. *See* Anwar Plaintiffs' Opposition Mem. at 5 ("[G]iven that federal securities claims have now been brought and the PSLRA stay issues will need to be considered by the Court, the Anwar plaintiffs … believe it is appropriate for the federal securities claims to be joined to the existing CAC."). Under these circumstances, it is in the Anwar Plaintiffs' and investors' best interests that all claims be asserted as vigorously as possible. There is clearly no basis (and certainly no "proof") that the Anwar Plaintiffs will not assert the securities claims as vigorously as possible just because they were not asserted in the initial CAC.

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[2] The Fairfield Investor Group itself acknowledges that a finding of inadequacy requires an '"antagonistic interest' aris[ing] when there is a 'fundamental conflict or inconsistency between the claims of the proposed class members' that 'outweigh[s] the substantial interest of every class member in proceeding with the litigation.'" *See* Fairfield Investor Group Mem. dated May 29, 2009 at 3 [Document No. 158] *quoting In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 514-15 (S.D.N.Y. 1996).

The Anwar Plaintiffs' initial strategy was carefully honed at the time of filing the CAC to benefit all Fairfield Sentry investors. Although other counsel may have proceeded differently, an *initial* difference of approach among counsel on strategy is not *proof* that the Anwar Plaintiffs are inadequate representatives.[3]

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[3] The Fairfield Investor Group cites two cases finding that plaintiffs were inadequate to prosecute investor claims. In *Andrews v. Bechtel Power Corp.*, 780 F.2d 124 (1st Cir. 1985), the Court determined that a delay of three years in prosecuting plaintiffs' case was prejudicial to the defendants. *Id.* at 131. In *E. Tex. Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395 (1977), plaintiffs failed to seek class certification before going to trial. *Id.* at 405. Neither decision is apposite. *In re Tremont Group Holdings*, 08 CV 1117, Transcript, (S.D.N.Y. March 19, 2009), is equally inapposite in that plaintiffs asserting state claims did not seek appointment as lead counsel on the federal claims (and vice versa). In fact, *Tremont* suggests that having separate counsel pursue federal and state claims is inefficient in that lead plaintiff in the *Tremont* federal securities case has now filed a Consolidated and Amended Class

In this regard, it is worth repeating that the Fairfield Investor Group initially filed a complaint dated March 10, 2009 that did not include Securities Act or Exchange Act claims [09 CV 2222-VM, Document 1], and did not assert those federal securities claims or argue they are important until after their counsel's application to be appointed a fourth interim co-lead counsel was rejected by this Court. *See* Anwar Plaintiffs' Opposition Mem. at 5-6. The filing of a consolidated complaint is a collaborative effort. That different plaintiffs and different counsel initially filed different claims against different parties for different periods does not make them inadequate or adverse to each other. Most importantly, there is now no difference in any Movant's position; we all agree at this point that federal securities law claims should be added to the case.

The Anwar Plaintiffs *are* both typical of investors in FGG-sponsored funds and adequate to represent investors.[4] In *In re Livent Noteholders Sec. Litig.*, 210 F.R.D. 512, 517 (S.D.N.Y. 2002), this Court found that the proposed class representative was adequate where the claims of misrepresentation (or misinformation) in the Registration Statement were "common to each putative class member." *Id.*

There is no "fundamental conflict" giving rise to an antagonistic interest to preclude the Anwar Plaintiffs from serving as lead plaintiff for the federal securities claims. *See In re*

Action Complaint dated April 20, 2009 asserting not only federal claims but more extensive state law claims than the state law lead plaintiff in *Tremont*. *See In re Tremont Securities Law, State Law, and Insurance Litigation*, 08 CV 11117-TPG, Document 66 and Document 65.

[4] Unlike the plaintiffs in *W. R. Huff Asset Management Co. LLC v. Deloitte & Touche LLP*, 549 F.3d 100 (2d Cir. 2008), AXA Private Management ("AXA") is the shareholder of record with respect to investments made in the Fairfield Sigma Fund. Thus, there is no question of AXA's standing to bring claims. *W.R. Huff*, involving a non-record owner proceeding under a power of attorney, is completely inapposite. Given AXA's experience as an institutional investor, it is ideally situated to meet the PSLRA objectives as a lead plaintiff. Further, even if the Anwar Plaintiffs do not include AXA, their financial interest is in excess of $12.8 million, much greater than the financial interests of either the Knight Services Plaintiffs or the Fairfield Investor Group.

NASDAQ Market-Makers Antitrust Litig., 169 F.R.D. 493, 514-15 (S.D.N.Y. 1996) (rejecting arguments of a "fundamental conflict" where plaintiffs were both purchasers and sellers of the securities). One of the other two applicants, the Knight Services Plaintiffs, has indicated that they now support the Anwar Plaintiffs' application. It makes sense to have one set of firms responsible for coordinated prosecution of these federal and state claims.

CONCLUSION

The Anwar Plaintiffs respectfully request that their motion for appointment as lead plaintiff be granted, and that Interim Lead Counsel be approved as lead counsel for the federal securities claims.

Dated: June 8, 2009

Respectfully submitted,

By: s/ Robert C. Finkel

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PROOF OF SERVICE

I hereby certify that on June 8, 2009, The Anwar Plaintiffs' Reply Memorandum In Further Support of Motion For Appointment As Lead Plaintiff and Approval of Lead Counsel was served upon all counsel who have filed Notices of Appearance in this action through CM/ECF.

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